

Committee on Resources

Full Committee

Witness Statement

TESTIMONY OF ALBERT H. MEYERHOFF BEFORE
THE U.S. HOUSE OF REPRESENTATIVES,
HOUSE NATURAL RESOURCES COMMITTEE,
REGARDING CONDITIONS IN THE GARMENT
INDUSTRY OF THE U.S. COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

(September 16, 1999)

My name is Albert H. Meyerhoff. I am a partner with the law firm of Milberg Weiss Bershad Hynes & Lerach LLP. I am also counsel for the plaintiffs in litigation brought in January of this year arising from conditions in the garment industry in the Commonwealth of the Northern Mariana Islands ("CNMI"). I appreciate the opportunity to testify before this Committee today and would like to primarily focus my remarks on a potentially landmark settlement agreement reached with several of the U.S. retailer defendants in that litigation. Before doing so, however, let me summarize events leading up to the litigation and the factual underpinnings of the case.

Following an investigation conducted for the better part of a year, on January 13, 1999, two federal class action lawsuits were filed on behalf of foreign "guest workers" from the Peoples Republic of China, the Philippines, Bangladesh and Thailand now working in the CNMI garment industry. A third companion lawsuit was filed in California state court by four national human rights and labor organizations (Global Exchange, Sweatshop Watch, Asian Law Caucus and UNITE!) alleging that U.S. retailers had engaged in false advertising (by claiming their goods were "Made in the U.S.A." or "No Sweat") and were trafficking in "hot goods" manufactured in violation of U.S. labor laws. The facts providing the basis for these three cases can be summarized as follows.

I. FACTUAL BACKGROUND

The Commonwealth includes the principal island of Saipan and a chain of 13 other islands north of Guam. After World War II, these islands were designated as a U.S. territory and, since 1975, have been a Commonwealth of the United States. While U.S. minimum wage and immigration laws were not extended to the Commonwealth, the Covenant establishing the Commonwealth did **not** exempt it from all other applicable U.S. labor laws, including OSHA, the provisions of the federal Fair Labor Standards Act requiring the payment of overtime, and federal civil rights laws, including Title VII and Anti-Peonage laws.

The Covenant granted the Commonwealth authority over its own immigration policies. While the purported intent of this provision was to provide for stricter control over immigration than existed on the U.S. mainland, the Covenant had the opposite effect, resulting over the last decade in a rapid influx of foreign immigrants who now make up the substantial majority of Saipan's population of 70,000.

Garment manufacturers operating on Saipan - more than 70% of which are owned by foreign interests - actively promoted this immigration policy so they could import contract foreign laborers to work in their factories. The foreign garment workers in these factories are actively recruited by quasi-private agencies operating in China, Bangladesh, Thailand and the Philippines at the behest of the Saipan garment factories. These recruiters advertise well-paying jobs in the U.S. with comfortable working and living conditions. However, the workers they recruit are charged exorbitant recruitment "fees" of \$2,000 to \$7,000 or more for one-year contracts as a condition of obtaining such promised "benefits," which are either paid in advance or deducted from the workers' paychecks. As these workers receive a minimum wage of \$3.05 per hour, between the average recruitment fee of \$5,000 and food and housing costs of \$2,400 a year, they must work up to 2,500 hours a year just to repay this debt - before earning a single dollar for themselves. Over 90% of the garment industry jobs in the Mariana Islands are now held by such foreign "guest workers." Since 1996, over 200,000 apparel industry jobs were lost in the continental United States.

The CNMI garment workers live in a state of peonage. If they are prematurely terminated for failing to work as demanded or for complaining and are summarily deported, either they or their families must nonetheless repay the huge recruitment fee. Moreover, workers are routinely required to sign "shadow" employment contracts establishing unqualified obedience to their employers while prohibiting them from participating in social, political or religious activities, asking for salary increases or alternative employment, marrying, becoming pregnant, attempting to change employers, or engaging in worker organizing efforts. These contracts are enforced by threats of immediate termination of employment, deportation and other means.

As documented by federal agencies, members of this Committee and others, the working conditions in the Saipan garment factories are, simply put, often deplorable. Little water is provided to workers during working hours, even though typically there is no air conditioning in these factories, where temperatures regularly reach or exceed 100 degrees. Impossible piece work quotas are imposed; when those quotas are not met, the workers are forced to provide "contributions to the company" - specifically, involuntary overtime work for no pay. Mistakes also result in uncompensated labor, as does perceived disobedience. Saipan's garment workers routinely work 12 hours a day, 7 days a week, and late into the evening, often for no pay beyond the first 40 hours or based on piece rates alone, with no overtime premium based on hours worked. Documented OSHA violations are rampant and are merely the tip of the iceberg, since inspections are announced sufficiently in advance to permit the CNMI contractors to remedy the most egregious violations.

Living quarters are overcrowded, with four to six persons in a 250-square-foot room and barracks often surrounded with inward-pointing razor wire. The "kitchens" consist of a hotplate and fresh drinking water is routinely not supplied. The food is of poor quality and often contaminated, resulting in several recent and serious incidents of mass food poisoning. Workers who attempt to leave these barracks have their names recorded and, unless they return within imposed curfews, are reported to management and forced to work unpaid overtime.

Major American retailers, such as The Gap, Inc., Wal-Mart Stores Inc., Tommy Hilfiger USA, Inc. and others have reaped a rich economic harvest from this system of exploitation. For the fiscal year that ended in October 1998, the **wholesale** value of garments shipped duty-free to the U.S. mainland from the CNMI totaled over \$1 billion; retail value is conservatively estimated at over \$2 billion. Most of these garments

enter the United States through California ports and are thereafter distributed nationwide. Notwithstanding that these garments are manufactured by foreign workers in primarily foreign-owned factories using foreign cloth and materials, because the factories are located in the Commonwealth these garments are labeled as being "Made in the U.S.A." Such labeling enables these garments to be sold both duty-free, at a higher price, and avoids quotas that would otherwise be in force if the factories were on foreign soil.

Last year alone, the federal government estimated that CNMI contractors and U.S. retailers avoided more than \$200 million in duties for \$1 billion worth of garments shipped from Saipan that would otherwise have been paid for the same clothing than if it were manufactured on foreign soil. Some Chinese garment interests have moved their textile operations to Saipan virtually "lock, stock and barrel," in large part to avoid U.S. duties and quota restrictions. The federal government estimates that this increase in Chinese apparel production in Saipan has allowed China to exceed its import quota by 250% in 1997 alone.

American retailers frequently acknowledge their obligation to eradicate sweatshop conditions, but those promises are honored in the breach. For example, the National Retail Federation Statement of Principles on Supplier Legal Compliance states that:

We retailers stand behind **our responsibilities** and commitments **to our customers** and our employees. It means we are committed to selling products that are made legally, ethically and morally. It means we hold our suppliers accountable if they fail to uphold worker rights. Our employees expect it, **our customers demand it, and our reputations depend on it.**

The Principles, signed by many of the U.S. retailers, also state that its members:

- Will require suppliers to comply with all applicable laws and regulations.
- Will take appropriate action against non-compliant suppliers which may include canceling the affected purchase contract, terminating the relationship with the supplier, commencing legal actions against the supplier or other actions as warranted.

Based upon these facts, a complaint was filed in the U.S. District Court for the Central District of California against both the largely foreign-owned CNMI garment contractors as well as U.S. retailers for violations of the Racketeer Influenced and Corrupt Organization ("RICO"), Anti-Peonage laws and the Alien Tort Claims Act, also sometimes known as the "Law of Nations." A second lawsuit was filed in the CNMI solely against the CNMI contractors for violating the Federal Fair Labor Standards Act and certain provisions of CNMI law. Finally, a third lawsuit was brought by four national human rights and labor organizations against U.S. retailers for alleged false advertising, fraud and trafficking in hot goods.⁽¹⁾

II. PREVIOUS GOVERNMENT OVERSIGHT AND INVESTIGATIONS

A host of government and Congressional investigations, reports and previous litigation have documented the serious and ongoing problems in the CNMI garment industry, from forced prostitution and abortions to a working environment characterized by exploitation and fear of retaliation.

In 1992, the United States Department of Labor filed suit against five garment factories owned by Mr. Willie Tan for labor and safety violations. The lawsuit alleged that employees were forced to work 84 hours per week without overtime pay, wages were paid below the already-low minimum wage, and employees were locked in their work sites and living barracks. Mr. Tan paid \$9 million in restitution to 1,200 workers -

the largest fine ever imposed by the United States Department of Labor. Tan's company also pled guilty to felony charges for violating 18 U.S.C. §1001, prohibiting fraudulent or false statements to the government.

In 1997, a series of government and investigative reports were released detailing serious problems in the CNMI's administration of its labor and immigration policies, based on worker interviews and on-site inspections. These reports include: Office of Insular Affairs, United States Department of the Interior, Report to Honorable George Miller's Congressional Delegation re: CNMI Labor and Human Rights Abuse Status Reports, Jan. 29, 1998 to Feb. 14, 1998 (Aug. 12, 1998) ("OIA Report"); United States Department of Labor, Evaluation of the Hay Report Minimum Wage Analysis for the Commonwealth of the Northern Mariana Islands (Mar. 1998); Democratic Staff Comm. on Resources H.R. Beneath the American Flag: Labor and Human Rights Abuses in the CNMI (Congressman George Miller (Mar. 26, 1998)); United States Department of the Interior, Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands, Third Annual Report (1997); Democratic Staff Comm. on Resources H.R., Economic Miracle or Economic Mirage? The Human Cost of Development in the Commonwealth of the Northern Mariana Islands (Congressman George Miller April 24, 1997). With the exception of a report by the Washington-based Hay Group (commissioned by the CNMI government at a reported cost of \$1.48 million), all of these reports are highly critical of the sweatshop conditions in the CNMI and advocate a variety of sweeping reforms. In response to these reports, on May 30, 1997, President Clinton informed then-CNMI Governor Froilan Tenorio of the Government's concerns about the labor and immigration policies of the CNMI in a letter stating that "certain labor practices in the islands ... are inconsistent with our country's values."

In July 1997, the Clinton Administration issued its own inter-agency report that corroborated the conclusions of these earlier studies and likewise called for fundamental changes in labor practices in the CNMI.

A government report dated February 14, 1998 and issued by the U.S. Department of Interior, Office of Insular Affairs ("OIA"), described the degrading treatment, abuse, and punishment of foreign garment workers, based on a two-week inspection tour by government officials. The following excerpts provide a summary of the OIA's findings:

"This is a report prepared by a seven member team who were retained by the Office of Insular Affairs, United States Department of Interior to prepare an itinerary for the Congressional delegation that was scheduled to visit the CNMI in February 1998 on a fact-finding trip. The itinerary was to include opportunities for the visiting members of Congress and their staff to speak directly to foreign contract workers, and to visit sites that exhibit serious problems connected to the present systems of labor and immigrants in the CNMI. The delegation's fact-finding mission was unexpectedly canceled at the last minute while team members were in Guam making final arrangements to go to the CNMI. Nevertheless, the Office of Insular Affairs believed that it was important for team members to gather the latest information regarding emerging problems of particular concern to the Federal Government. These issues included:

- The problems faced by the unemployed legal and illegal population of foreign contract workers in the CNMI include fraudulent recruitment practices, substandard living conditions, severe malnutrition, and health problems, and unprovoked acts of violence being inflicted upon foreign contract workers that are not being addressed by an ineffective CNMI labor and immigration system;
- Underage Filipino or Chinese waitresses forced to work as bar girls, who have been recruited under

false pretenses to work as waitresses, garment factory workers, or cashiers, but subsequently forced to work as strippers and prostitutes in Karaoke bars, discos, massage parlors and clubs;

- Living and working conditions of the Chinese garment workers prevalent in CNMI garment companies, the restrictions imposed by "shadow contracts" they are required to sign in China, and the flow of Chinese contract workers from the CNMI into Guam to seek asylum;

* * *

- Reports of women from the People's Republic of China who have become pregnant while working in the CNMI and are forced to return to China to have an abortion or forced to have an illegal abortion performed in the CNMI.

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- Workers describe a Chinese garment work force compelled to live and work under conditions of employment that were tolerated due to the fear of retaliation, economic and otherwise from their government.

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Shadow Contracts and Fear of Retaliation

- From the time garment workers first came to the CNMI, to the present time, the Chinese deploying agency sending them abroad has required all workers to sign contracts, kept by the deploying agency, which specify the workers' conduct and control over his wages while abroad. These contracts also contain sanctions the workers face if they break this contract while working in the CNMI. Because one of the sanctions specified provides for punishment if the workers reveal labor-related problems to the government agencies in the CNMI, workers are fearful of sharing any information to interviewers and investigators.

Copies of these contracts have been made available to the Department of Interior, and as they all contain essentially the same restrictive provisions, many of which are in direct contravention to federal and local labor and civil right laws, this information will not be repeated here....

- [W]orkers feared returning to China because while employed in the CNMI, they had violated provisions of the Chinese contracts, also known as "shadow contracts." These are called shadow contracts because they are never made available to governmental agencies or other interviewers. The violations they had been involved in included attending religious services in the CNMI, refusing to have an abortion, and complaining about labor violations during the period of time they worked here.

Working and Living Conditions

- Two team members visited workers at the [Redacted] barracks. There appeared to be little change during the past year despite OSHA inspections of the site.
- Workers are housed in rooms approximately 25 feet by 10 feet with four to six people to a room. The floors are bare concrete and the beds are made of plywood with light padding. The rooms are hot and stuffy because there is no air conditioning. Insect infestation is a common complaint and most

workers need to sleep under mosquito netting.

- An interview revealed that the water is turned on for only 15 minutes per day for bathing and house cleaning. At this time workers will fill buckets for use later either flushing toilets or cleaning. Hot water is made by immersing heating elements into buckets and leaving them for a period of a few hours. Some workers [Redacted] are not provided with drinking water at their barracks and must fill bottles at the factory to bring back with them.
- During the course of this inspection, team members encountered a woman crying quite loudly in her bunk. Coworkers explained that she was new to the factory and still "needed to get used to the situation." After more questioning it was learned that the woman was upset because of the little amount of money she was earning. The workers made the claim that she must provide a certain amount of free work to the factory every day. She was able to give a detailed explanation of the quota system, which is based on hourly and total percentages. The woman was concerned that she would be unable to repay the money she borrowed for her recruitment fees and she worried for the well being of her family because she didn't have enough money to send home."

OIA Report, at 1, 15-16 (emphasis added).

The Fourth Annual Report of the Federal-CNMI Initiative on Labor stated that "the Administration continues to be concerned about the CNMI's heavy and unhealthy dependence upon an indentured alien worker program and on trade loopholes to expand its economy." (Emphasis added.) A press release by the United States Department of the Interior accompanying the publication of this report stated, "the underlying immigration, labor, and trade problems of the Commonwealth of the Northern Mariana Islands (CNMI) remain as troublesome as ever, despite a year's worth of reforms set in motion by the recently-elected Governor of the [CNMI]." Press Release accompanying the Fourth Annual Report of the Federal-CNMI Initiative on Labor, at 1 (emphasis added).

Violations of OSHA regulations by the CNMI contractors have been frequent and numerous. During the first half of 1997, OSHA sent four inspection teams to the CNMI and found over 500 violations in the labor barracks alone. Inspectors found that barracks were unhealthy, with overcrowding, unsanitary facilities, dirty and inoperable toilets, dirty kitchens and electrical hazards. Further, federal investigators noted evidence of class members being abused or fired for complaining about these poor facilities. During the most recent inspections carried out in February 1998, the OSHA Regional Administrator noted in an interview with a local news agency that working conditions in Saipan were worsening. In fact, since 1993, there have been over one thousand regulatory violations identified by OSHA inspectors in the CNMI garment factories with which the U.S. retailers do business. [\(2\)](#)

Following these federal OSHA inspections (and three weeks before hearings in the United States Senate on labor and immigration conditions in the CNMI), the local government in or about April 1998 embarked upon surprise inspections of its own at various garment factories in the CNMI to check for illegal safety violations. At one factory, inspectors found the emergency exit nailed shut and tape covering smoke detector sensors. Another was cited for electrical wiring problems and dysfunctional air conditioning, and investigators discovered an unlicensed nurse and illegal medical clinic there.

Despite all of these reports confirming a system of peonage, indentured and involuntary servitude and illegal working conditions in the CNMI garment factories, neither contractors nor the CNMI government have acted to rectify these conditions. Likewise, except as described below, American retailers - whose quality-

control personnel routinely oversee production - have failed to require these conditions be either corrected or eliminated as a precondition of doing business in the CNMI with the contractors.

III. THE SETTLEMENT AGREEMENTS

In a significant breakthrough concerning the pervasive problems confronting the CNMI garment industry, on August 8, 1999, Nordstrom, J. Crew Group Inc., Cutter & Buck and The Gymboree Corporation became the first U.S. retailers to settle claims against them in the litigation described above. In addition, "agreements in principle" have been reached with Polo Ralph Lauren, Donna Karan, Phillips-Van Heusen, Chadwick's of Boston and Calvin Klein. Under these settlements, the retailers have agreed in their future contracts to require their CNMI contractors to comply with a set of "monitoring standards" establishing mandatory minimum workplace and living standards. These standards will address a host of the problems identified by members of this Committee, government agencies and others in the past. They will require, for example, that employees receive at least the CNMI minimum legal wage with no "off the clock" or "voluntary" work, be ensured freedom of movement within the CNMI, and freedom to worship as the workers please. Employees will be paid at least one and one-half times their regular wages for work over 40 hours, and will be provided with safe and healthful working conditions. In addition, contractors doing business w-ith these retailers will no longer be permitted to recruit workers from any employer broker that utilizes "shadow contracts," contracts signed in China or elsewhere that limit freedoms guaranteed by U.S. law - or that impose unlawful "recruitment fees" that now create a condition of indentured labor. While actual costs of transportation to (but not from) the CNMI and legally-required government fees (*e.g.*, for passports) will be allowed, they will be capped, and no recruitment fees will be charged. If garment workers, in the future, are required to pay such fees to brokers, their CNMI contractor employers will be obligated to reimburse the workers for those fees.

Under the terms of the settlements, a comprehensive monitoring plan will be established to ensure that the standards are met. Monitoring will be performed by Verité, a Massachusetts-based non-profit organization that will establish offices in the CNMI to oversee compliance with the standards. Verité is empowered to conduct inspections and evaluations of working conditions, including unannounced inspections and worker interviews, require CNMI contractors to "cure" identified violations, place them on probation for repeated violations and, in the case of a pattern and practice, require the retailer to terminate the contract. A settlement fund of \$1.25 million will be established to fund the monitoring, as well as for public education, and to partially reimburse workers for unlawful recruitment fees paid in the past. CNMI contractors that will now be subject to monitoring under the settlement include Global Manufacturing, Inc., Concorde Garment Manufacturing Corp., Trans-Asia Garment Forte Corp., Jin Apparel, Inc., Marianas Garment Manufacturing, Inc., Mirage Saipan Inc., N.E.T. Corp. dba Suntex Manufacturing, Inc., Onwel Manufacturing Saipan Ltd., Diorva Saipan Ltd. and Micronesian Garment Manufacturing, Inc.

These settlement agreements hold significant promise for improving working and living conditions in the CNMI garment industry. By using their economic leverage, these retailers will force change in the their contractors - or they will lose their business.

IV. CONCLUSION

The controversy raging over conditions in CNMI's garment industry actually raises in a particularly visible context a more fundamental human rights debate over globalization of particular industries - garment manufacture included - and the duties and obligations of U.S. multinationals as global citizens. As trade barrier dissolve and American capital follows cheap labor, what will become of American values? Whose

rights will remain protected? What laws will apply? And, in what fora will disputes be resolved?

For most Americans, the CNMI - and its principal island of Saipan - is remembered as the site of one of the great battles of World War II - where more than 100,000 Americans fought and 3,100 lost their lives. The freedom won for this tiny island at the sacrifice of so many American lives should be protected, not exploited. We should expect - and Congress should require - that U.S. companies ensure that basic human dignity is protected in the CNMI.

In the long term, action by Congress is essential to address comprehensively the continuing problems in the CNMI that have repeatedly been documented but never resolved. Today's hearings are an important step in that process, and we look forward in the future to working with this Committee and Congress in achieving fundamental reform in the CNMI.

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1. Selected press coverage of the litigation is attached to this testimony as Exhibit "A".
2. A photograph of typical CNMI garment worker housing is attached as Exhibit "B".

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